

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL GORDY,

Plaintiff,

V.

CAREMORE HEALTH PLAN, INC.;
ORANGE COUNTY GLOBAL
MEDICAL CENTER; FRANK
NASTANSKI, M.D.; and DOES 1 through
50, inclusive.

Defendants.

Case No. 8:19-cv-00048 JVS (JDEx)

STIPULATED PROTECTIVE ORDER

[Note Changes by the Court in Bold]

1 Pursuant to the Stipulation by Plaintiff Paul Gordy (“Plaintiff”) and Defendants
2 Orange County Global Medical Center, Frank Nastanski, M.D., and CareMore Health
3 Plan (erroneously sued as “CareMore Health Plan, Inc.”) (Dkt. 38), and subject to
4 certain changes, good cause appearing therefor, the Court finds and orders as follows:

5 1. This action is likely to involve the production of personal health
6 information and other valuable commercial, financial, trade secret and/or proprietary
7 business information for which special protection from public disclosure and from use
8 for any purpose other than prosecution of this action is warranted. Such confidential
9 and proprietary materials and information consist of, among other things, confidential business
10 business or financial information, information regarding confidential business
11 practices, confidential commercial information (including information implicating
12 privacy rights of third parties), and information otherwise generally unavailable to the
13 public, or which may be privileged or otherwise protected from disclosure under state
14 or federal statutes, court rules, case decisions, or common law. Accordingly, to
15 expedite the flow of information, to facilitate the prompt resolution of disputes over
16 confidentiality of discovery materials, to adequately protect information the parties are
17 entitled to keep confidential, to ensure that the parties are permitted reasonable
18 necessary uses of such material in preparation for and in the conduct of trial, to
19 address their handling at the end of the litigation, and serve the ends of justice, a
20 protective order for such information is justified in this matter. It is the intent of the
21 parties that information will not be designated as confidential for tactical reasons and
22 that nothing be so designated without a good faith belief that it has been maintained in
23 a confidential, non-public manner, and there is good cause why it should not be part of
24 the public record of this case.

25 2. A document constitutes or contains “Confidential Material” when it has
26 been given that designation by the party producing it or by the party to whom the
27 information relates (“the Designating Party”). A party or nonparty may designate
28 documents or information as “Confidential Material” as follows:

1 a. In the case of documents and information contained in documents,
2 designation must be made by placing the following legend on each page of the
3 document before production: "CONFIDENTIAL SUBJECT TO PROTECTIVE
4 ORDER."

5 b. In the case of discovery responses and information contained in
6 discovery responses, designation must be made by:

7 i. Placing a statement at the start or end of the responses
8 specifying that the responses, or part of the responses are designated Confidential
9 Material; and

13 c. In the case of depositions and hearings, designation of the portions
14 of the transcript (including exhibits) that contain Confidential Material must be made
15 by the Designating Party by:

21 Once designated, the original and each copy of the transcript that
22 contains Confidential Material must bear (or must be modified by counsel to bear) the
23 following legend on its cover: "CONFIDENTIAL SUBJECT TO PROTECTIVE
24 ORDER."

25 3. For purposes of this Order, “Confidential Material” includes the
26 following types of documents and information:

27 a. Information that is proprietary or constitutes a trade secret,

including, without limitation, information, materials, and other documents reflecting non-public business or financial strategies and confidential competitive information that, if disclosed, could result in prejudice or harm to the disclosing party;

b. Non-public financial or business information;

c. Non-public communications with regulators, Departments of

Insurance, or other governmental bodies that are intended to be kept confidential or are protected from disclosure by statute or regulation; and

d. Patient-specific and policyholder-specific information, including private medical information.

4. Any copies or reproductions, excerpts, summaries, or other documents or media that contain or incorporate Confidential Material as defined above will also be treated as Confidential Material under this Order.

5. Nothing in this Order will be construed as requiring a Defendant to produce any personal or identifying information regarding any individual or any other patient or policyholder, nor patient or policyholder information that is protected from disclosure under applicable state or federal law

6. Confidential Material may be used solely for the purpose of conducting this litigation and not for any other purpose whatsoever. For the purpose of conducting this litigation, Confidential Material may be used by, copied by, exhibited to, or disclosed to the following persons or entities only:

a. The parties to this action;

b. The parties' attorneys and their respective employees;

c. Any witness from whom testimony is taken or will be taken in this

action, except that the witness may be shown copies of Confidential Material only

during his or her testimony and in preparation for the testimony, and only to the ex-

relevant to the testimony. The witness may not retain any Confidential Material;

d. Consultants, experts, and investigators employed by the parties or

their attorneys in the prosecution or defense of any aspect of this litigation;

e. Court reporters used in connection with this action and their employees;

f. The Court and its staff;

g. The jury, if any, in the trial of this case; and

h. Any mediator and his or her employees.

7. No disclosure may be made to any person under Paragraphs 6(c), (d) or (e) until that person has executed an “Understanding and Agreement” in the form attached as Exhibit A. With respect to consultants, experts, and investigators employed by the parties to this litigation, Exhibit A must be fully executed by the consultant, expert, or investigator and retained by counsel for the party employing the consultant, expert, or investigator. In the event that any consultant, expert, or investigator employed by the parties to this litigation ceases to be engaged in the preparation of this Action, access by such person to designated Confidential material shall terminate. Any such material in the possession of any such person shall be returned or destroyed. This Order’s provisions and the obligations not to disclose any portions of such material shall remain in full force and effect as to all such persons.

8. All persons described in paragraphs 6(a) through **(e) and (h)** above are prohibited from disclosing any portion of Confidential Material to any other person, or from using any information obtained from the Confidential Material, except as permitted by this stipulation.

9. Nothing in this stipulation prevents the use of publicly available information.

10. Any party who seeks to file with the Court any motion papers, briefs, memoranda, affidavits, declarations, exhibits, transcripts, or any other papers that contain any Confidential Material must comply with the procedures set forth in Local Rule 79-5, 79-6, and 79-7. The mere fact that an item is designated as Confidential

Material under this Order does not, of itself, authorize its filing under seal.

11. If any party or nonparty bound by this stipulation intends to disclose, discuss, or otherwise refer to any Confidential Material in open court at any hearing or trial, that person must notify the Court, the Designating Party, and all other parties to this action of its intention to do so. **The procedures for the handling of Confidential Material at any hearing or trial shall be determined by the presiding judge.**

7 12. A party's inadvertent failure to designate disclosed materials as
8 Confidential Material does not waive its right to do so and may be remedied by
9 prompt written notice upon discovery of the error, in which case the material in
10 question will be subject to the protections of this Order.

13. The inadvertent, unintentional, or in camera disclosure of Confidential
Material shall not be deemed a waiver in whole or in part of any party's claims of
confidentiality. Moreover, where a Designating Party has inadvertently produced a
document which the Designating Party later claims should not have been produced
because of privilege, the Designating Party may at any time require the return of any
such document. A request for the return of any document shall identify the document
by Bates number and the basis for asserting that the specific document (or portions
thereof) is subject to the attorney-client privilege, the work product doctrine, or any
other applicable privilege or immunity from discovery, the basis for asserting that the
production was inadvertent, and the date of discovery that there had been an
inadvertent production. The inadvertent production of any document which a
Designating Party later claims should not have been produced because of a privilege
will not be deemed to be a waiver of any privilege to which the Designating Party
would have been entitled had the privileged document not inadvertently been
produced. If a Designating Party requests the return, pursuant to this Paragraph, of
any such document from another party, the party to whom the request is made shall
within thirty (30) days return to the Designating Party all copies of the document

1 within its possession, custody, or control, including all copies in the possession of
2 experts, consultants, or others to whom the document was provided. In the event that
3 only portions of the document contain privileged subject matter, the Designating Party
4 shall substitute a redacted version of the document at the time of making the request
5 for the return of the requested document.

6 14. Nothing herein shall be deemed to waive any applicable privilege or
7 work product protection, nor shall an inadvertent disclosure of material protected by
8 privilege or work product protection constitute a waiver of such privilege or
9 protection.

10 15. Notwithstanding anything to the contrary in this stipulation, any party
11 may use the following documents or information without restriction, regardless of
12 whether they have been designated as Confidential Material:

13 a. Its own documents or information;

14 b. Documents that the party has previously received or sent, including

15 final versions of letters and emails listing the party as a recipient or sender; and

16 c. Documents or information developed or obtained independently of

17 discovery, including party and non-party discovery, in this action.

18 16. This stipulation applies with equal force to any and all copies, extracts,
19 compilations, summaries, and oral recitation of Confidential Material.

20 17. Within sixty (60) days of final termination of this action, or sooner if so
21 ordered by this Court, counsel for the party receiving any Confidential Material must
22 transmit all Confidential Material (including all copies) to counsel for the Designating
23 Party.

24 18. A party is not obligated to challenge the propriety of a confidentiality
25 designation at the time it is made. Failure to do so does not preclude a subsequent
26 challenge to the designation. In the event that counsel for a party receiving
27 documents, testimony or information in discovery designated as "Confidential"

1 objects to such designation with respect to any or all of such items, said counsel shall
2 advise counsel for the Designating Party, in writing, of such objections, the specific
3 documents, testimony or information to which each objection pertains, and the
4 specific reasons and support for such objections (the "Designation Objections"). If
5 the parties do not reach a resolution within two (2) weeks from receipt of the written
6 Designation Objections (through, for example, the use of alternate documents,
7 testimony, or information, redaction of the items, or de-designation of the items), the
8 Designating Party shall have thirty (30) days from the end of that period to file a
9 motion with the Court seeking to uphold any and all designations on documents,
10 testimony or information addressed by the Designation Objections (the "Designation
11 Motion"). Pending a resolution of the Designation Motion by the Court, any and all
12 existing designations on the documents, testimony or information at issue in such
13 Motion shall remain in place. The Designating Party shall have the burden on any
14 Designation Motion of establishing the applicability of its "Confidential" designation.
15 In the event that the Designation Objections are not addressed by a Designation
16 Motion, then such documents, testimony or information shall be de-designated in
17 accordance with the Designation Objection applicable to such material.

18 **19. Any dispute concerning the application of this Order may be presented
20 for determination by the Court in compliance with the applicable Federal Rules
21 of Civil Procedure and Local Rules of this Court.**

22 **23. If any Party has obtained Confidential Material under the terms of this**
24 **Order and receives a request or command to produce such Confidential Material by**
25 **subpoena or other compulsory process, the Party must notify the Designating Party via**
26 **electronic mail and U.S. mail within two (2) business days. The notice shall identify**
27 **the Confidential Material sought, the date set for the production of such subpoenaed**
28 **information, and unless prohibited by applicable law, a copy of the subpoena or other**
29 **compulsory process so that the Designating Party, at its sole expense, may take such**

1 action as it deems fit to control dissemination of the Confidential Material. If an
2 application for a protective order is made promptly and before the return date, the
3 Party shall not produce such Confidential Material prior to receiving the court order or
4 the consent of the Designating Party. In the event that Confidential Material is
5 produced to a non-party to this Order, that material shall still be treated as
6 Confidential Material by the parties to this Order. **Nothing in this Order authorizes**
7 **any party to disobey or ignore lawful process or orders issued by another court.**

8 21. Nothing in this Order shall prevent a party from seeking modification of
9 this Order.

10 22. The parties agree that this stipulation binds them regardless of whether it
11 is signed by the Court unless the Court enters a different protective order in place.

12 23. The terms of this Order shall survive and remain in effect after the
13 termination of this action.

14
15 IT IS SO ORDERED.

16
17 DATED: October 18, 2019


18 JOHN D. EARLY
19 United States Magistrate Judge
20
21
22
23
24
25
26
27
28

EXHIBIT A

AGREEMENT TO MAINTAIN CONFIDENTIALITY

3 I hereby acknowledge that I, _____, am about to receive
4 Confidential Material supplied in connection with *Gordy v. CareMore Health Plan, et*
5 *al.*, Case No. 8:19-cv-00048 JVS (JDE). I certify that I understand that the
6 Confidential Materials are provided to me subject to the terms and restrictions of the
7 Stipulation and Protective Order filed in this action. I have been given a copy of the
8 Stipulation and Protective Order. I have read it, and I agree to be bound by its terms.

9 I understand that Confidential Materials, as defined in the Stipulation and
10 Protective Order, including any notes or other records that may be made regarding any
11 such Materials, shall not be Disclosed to anyone except as expressly permitted by the
12 Stipulation and Protective Order. I will not copy or use, except solely for the purposes
13 of this Proceeding, any Confidential Materials obtained pursuant to this Protective
14 Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

15 I further understand that I am to retain all copies of all Confidential Materials
16 provided to me in the Proceeding in a secure manner, and that all copies of such
17 Materials are to remain in my personal custody until termination of my participation
18 in this action, whereupon the copies of such Materials will be returned to counsel who
19 provided me with such Materials.

20 I declare under penalty of perjury, under the laws of the State of California, that
21 the foregoing is true and correct.

23 DATED: _____, 2019 By: _____
24 _____
25 Signature: _____
26 Title: _____
27 Address: _____
28 Telephone: _____